

REMARKS

The Office Action mailed November 12, 2008 has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Record of Interview

On December 10, 2008, an interview was conducted by telephone between Examiner Haliyur and the undersigned. The Applicant thanks the Examiner for granting this interview. The details of the interview are set forth in the Interview Summary document made of record.

Claim Status and Amendment of the Claims

Claims 1-70 are currently pending.

No claims stand allowed.

Claims 1-2, 9-10, 16, 20, 24, 28, 32-35, 42-43, 49, 53, and 57-60 have been amended to further particularly point out and distinctly claim subject matter regarded as the invention. Support for these changes is found in the specification, figures, and claims as originally filed, for example, paragraphs 2, 10, and 16-18.

New claims 61-70 have been added, which also particularly point out and distinctly claim subject matter regarded as the invention. Support for these claims is found in the specification, figures, and claims as originally filed.

The Applicant gratefully acknowledges indication of allowability of claims 2, 10, 17, 21, 25, 29, 35, 43, 50, and 54 subject to their re-writing in independent form including all of the limitations of the base claim and any intervening claims. New Claims 61, 62, 63, 64, 65, 66, 67, 68, 69, and 70 include the limitations of claims 2, 10, 17, 21, 25, 29, 35, 43, 50, and 54, respectively, rewritten in independent form and including all of the limitations of the base claim and any intervening claims.

With this Amendment it is respectfully submitted the claims satisfy the statutory requirements.

The 35 U.S.C. § 101 Rejection

Claims 57-60 stand rejected under 35 U.S.C. § 101, as allegedly containing non-statutory subject matter.¹ With this Amendment, Claims 57-60 have been amended to recite in part "... a computer program storage device readable by a computer, tangibly embodying a computer program of instructions executable by the computer to perform a method, the method comprising ...". Withdrawal of the 35 U.S.C. § 101 rejection is respectfully requested.

The First 35 U.S.C. § 103 Rejection

Claims 1, 3-9, 11-15, 33-34, 36-42, 44-48, and 57-58 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kadambi et al.² in view of Erimli et al.,³ and further in view of Liu et al.^{4 5} This rejection is respectfully traversed.

According to the M.P.E.P.,

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure.⁶

¹ Office Action mailed November 12, 2008 at ¶ 3.

² U.S. Patent No. 7,212,534 to Kadambi et al.

³ U.S. Patent No. 6,405,258 to Erimli et al.

⁴ U.S. Patent No. 7,292,572 to Liu et al.

⁵ Office Action at ¶ 5.

⁶ M.P.E.P. § 2143.

Furthermore, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.⁷

Claim 1

Claim 1 as presently amended recites:

A method comprising:

- determining a present need to pause traffic flow to a network device, the traffic flow comprising one or more digital data packets, each of the one or more digital data packets including a priority level, the priority level indicating a relative level of importance of timely delivery of the digital data packet to the network device; and

- responsive to the determining,

- placing in a type/length field in a frame, a value signifying the frame indicates that traffic flow to the network device should be paused;

- placing in an opcode field in the frame, a value signifying that traffic flow to the network device should be paused or not paused according to its priority level;

- creating a priority mask field in the frame; and

- placing in the priority mask field, a value signifying which priority levels should be paused.

The Examiner states:

Regarding claims 1,34, Kadambi et al in the invention of "Flow Based Congestion Control" disclosed a method (Figs 10 to 17) comprising: determining a present need to pause traffic to a network device; and responsive to the determining, placing in a type/length field in a frame, a value signifying that the frame indicates that traffic flow to the network device should be paused (LENGTH/TYPE Field of Fig 17, col 15, lines 11-23); placing in an opcode field in the frame, a value signifying that traffic flow to the network device should be paused or not paused according to its priority level (col 15, lines 24-59); creating a priority mask field in the frame (OPCODE 1-3 field of Fig 16); and placing in the priority mask field, a value signifying which priority levels should be paused (PRIORITY -BITMAP field of Fig 16, col 14, lines 41-46). Kadambi et al disclosed that the traffic flow to the network device should be paused for a specified period of time when the priority indication in the frame typellength field indicates a pause operation (col 15, lines 11-23), but fails to positively disclose placing in the priority mask field, a value signifying which priority levels should be paused. However, Erimli et al disclosed a method for placing priority value signifying which priority levels should be paused in the typellength field (low and high priority values to control the traffic to the station,

⁷ *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

col 13, lines 5-40, Fig 5A1B). Therefore it would have been obvious for one of the ordinary skill in the art at the time the invention was made to use the method of placing priority value signifying which priority levels should be paused in the typellength field as taught by Erimli et al in the system of Kadambi et al to create a priority mask field in the frame and placing in the priority mask field, a value signifying which priority levels should be paused. Kadambi and Erimli et al disclosed the traffic flow control using pause frame but fails to positively disclose a method to create a priority mask field in the pause frame. However, Liu et al disclosed a method of generating and identifying mask field in the pause frame using mask registers (mask fields, Figs 1 & 9, col 3, lines 27-54, col 6, lines 64-67, col 7, lines 1-23). Therefore it would have been obvious for one of the ordinary skill in the art at the time the invention was made to use the method of generating mask field in the pause frame as taught by Liu et al in the system of Kadambi et al as modified by Erimli et al to create a priority mask field in the frame to signify whether a data stream of a particular priority should be paused or not. One is motivated as such in order to provide a dynamic traffic flow control in the network device by either pausing or allowing a data stream of certain priority level indicated in the opcode field of the pause frame.⁸

The Applicant respectfully disagrees for the reasons set forth below.

Kadambi et al. speaks generally about a virtual channel (VC) handshake, whereby link partners exchange information regarding their respective VC capabilities. The VC handshake frames include a pause timer field.⁹ Once the VC handshake process is completed, the link partners may communicate with each other based on the known VC capabilities exchanged during the VC handshake; fields including the pause timer field remain the same after the VC handshake process, regardless of a real-time congestion condition. Whereas Claim 1 as presently amended requires the recited modifications of a frame to be performed upon determining a present need to pause traffic to a network device. The claimed modification of a frame allows more accurate modulation of pause frames based on actual congestion conditions.

Also contrary to the Examiner's statement, Erimli et al. does not disclose placing in the priority mask field, a value signifying which priority levels should be paused as required by

⁸ Office Action at pp. 3-5.

⁹ Kadambi et al. at col. 6 ll. 66-67.

presently amended Claim 1. In support of the Examiner's statement, the Examiner refers to the following portion of Erimli et al.:

The Type/Length field specifies the Ethertype, while the Opcode field contains a MAC control Opcode. The values stored in the Ethertype and Opcode fields are determined according to the specific networking protocol (i.e., IEEE 802.3x) being implemented.

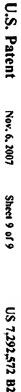
The PAUSE length specifies, in terms of slot times, the delay interval that must be observed by the workstation identified by the destination address. The length of the pause interval value is in the range of 0-65535 slot times, and is retrieved from one of the registers 522 or 532, depending on the port. The pause interval value programmed into registers 522 and 532 can be based on the severity of the congestion. For example, the pause length can be selected based on the average throughput of entries for the congested output queue 400, or the time required to process each entry in the output queue. For example, if the average throughput of entries in the output queue 400 is high or the time required to process entries is long, then selection of a higher pause interval value will function to allow processing of sufficient entries without congesting the output queue 400. Similarly, if the average throughput of entries in the output queue 400 is low or the time required to process entries is short, then selection of a short pause interval value may be selected. Various other criteria may be used for selecting an appropriate pause interval depending on the specific application.

According to the disclosed embodiment of the invention, a different threshold value may be set for the high priority 410b and low priority 410a inputs of the output queue 400. Furthermore, each of the thresholds may be independently set, in real time, to accommodate the throughput of the low and high priority inputs (410a, 410b) of the output queue 400. Hence, the Opcode field of the PAUSE frame may include information that indicates whether the PAUSE frame corresponds to the high priority threshold value or the low priority threshold value.¹⁰

The above portion of Erimli et al. cited by the Examiner speaks generally about setting different threshold values for two different inputs of an output queue. But the cited portion of Erimli et al. says nothing about placing in the priority mask field, a value signifying which priority levels should be paused as required by Claim 1. Erimli et al. apparently sends one packet per priority level, whereas Claim 1 requires the priority mask field in the frame signify priority levels of traffic flow to the device that should be paused.

¹⁰ Erimli et al. at col. 13 ll. 5-40.

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network device, where the traffic flow comprises one or more digital data packets, and each of the one or more digital data packets includes a priority level. Thus, there is no correspondence between the “levels” of Liu et al. and the “priority level”’s in claim 1 as presently amended. With this Amendment, Claim 1 has been amended to make this distinction more clear. Specifically, Claim 1 has been amended to recite in part “the traffic flow comprising one or more digital data packets, each of the one or more digital data packets including a priority level, the priority level indicating a relative level of importance of timely delivery of the digital data packet to the network device.” For at least the above reasons, the 35 U.S.C. § 103 rejection of Claim 1 as presently amended is unsupported by the cited art of record and the rejection must be withdrawn.

Dependent Claims 3-6

Claims 3-6 depend from Claim 1. Claim 1 being allowable, Claims 3-6 must also be allowable for at least the same reasons as for Claim 1.

Claim 3

Claim 3 recites:

The method of claim 1, wherein the placing in an opcode field in the frame includes placing a value signifying that traffic flow to the network device should be paused or not paused according to its priority level, and that the pausing will be for times corresponding to each priority level indicated by a pause time field, in an opcode field in the frame if it is not desired to use the same pause time for each priority level.

The Examiner states,

... Kadambi et al disclosed wherein said placing a value signifying that traffic flow should be paused or not paused according to its priority level in an opcode field in the frame includes placing a value signifying that traffic flow should be paused or not paused according to its priority level (inhibit or allow transmission of frames, col 15, lines 19-35), and that the pausing will be for times corresponding to each priority level indicated by a pause time field, in an opcode

field in the frame if it is not desired to use the same pause time for each priority level (col 3, lines 41-52).¹¹

The Applicant respectfully disagrees. In support of the Examiner's statement, the Examiner refers to the following portion of Kadambi et al.:

Additionally, the step of waiting for the congestion at the one priority queue to abate can include awaiting a resume virtual channel message from the remote network device and/or monitoring a pause timer, which is started upon receipt of the virtual channel message and sending data destined for the one priority queue once the pause timer reaches a certain value. Also, the virtual channel between the network device and the remote network device can be negotiated prior to the receipt of the virtual channel message, and the states of congestion of the priority queues may be represented by a bitmap, that is a combination of a port bitmap and a priority bitmap.¹²

First, as Claim 3 depends from Claim 1, the term "placing" refers to the same term in Claim 1.

The "placing" of Claim 1 is responsive to determining a present need to pause traffic to a network device. Therefore, the "placing" recited in Claim 3 must also be responsive to determining a present need to pause traffic to a network device. This is not disclosed by the portion of Kadambi et al. cited by the Examiner.

Furthermore, the above portion Kadambi et al. cited by the Examiner speaks generally about monitoring a pause timer, but says nothing about placing a value in an *opcode* field signifying that the pausing will be for *times* corresponding to *each priority level* indicated by a pause time field as required by Claim 3. For this additional reason, the 35 U.S.C. § 103 rejection of Claim 3 is unsupported by the cited art of record and the rejection must be withdrawn.

Claim 4

Claim 4 recites:

The method of claim 3, further comprising:

¹¹ Office Action at p. 5.

¹² Kadambi et al. at col. 3 ll. 41-52.

placing a separate value for each possible priority level in the pause time field, the separate value indicating an independent pause time for each corresponding priority level.

The Examiner states,

... Kadambi et al disclosed placing a separate value for each possible priority level in said pause time field, said separate value indicating an independent pause time for each corresponding priority level (Figs 14/15, col 13, lines 8-30).¹³

The Applicant respectfully disagrees. In support of the Examiner's statement, the Examiner refers to FIGS. 14 and 15 of Kadambi et al., yet neither figure refers to a separate (i.e.

independent) pause time field for each corresponding priority level. The Examiner also refers to the following portion of Kadambi et al.:

In addition, the priority flow control can be egress based. In this mode of operation, the congestion is detected on the egress port with differentiation based on priority. This results in a VC control frame being sent to other ports when the switch's ingress detects packets being sent to the congested port/priority. The use of such a mode is illustrated in FIG. 14.

The following describes the sequence of events involved in egress based priority flow control. 1) Servers A 1410 and B 1450 are sending traffic to the switch 1400, where the switch also communicates with Workstations 1420 1440 through separate ports. 2) Priority Queue 1 in egress port 3 in switch is congested. An internal message is sent to all switch ports indicating that port 3/priority queue 1 is congested. 3) Switch port 1 sends a VC Priority Flow Control frame to Server A indicating the priority 1 is blocked. 4) Server A decodes the VC frame and stops sending frames from priority queue 1. 5) When switch port 3/priority 1 is no longer congested, an internal message is sent to all the ingress ports. 6) Switch port 1 sends a VC Priority Flow Control frame to Server A indicating the priority 1 is not congested. 7) Server A resumes sending traffic from priority queue 1.¹⁴

The above portion of Kadambi et al. says nothing about time fields, let alone placing a separate value for each possible priority level in the pause time field, the separate value indicating an independent pause time for each corresponding priority level as required by Claim 4. For this additional reason, the 35 U.S.C. § 103 rejection of Claim 4 is unsupported by the cited art of record and the rejection must be withdrawn.

¹³ Office Action, p. 5.

¹⁴ Kadambi et al. at col. 13 ll. 8-30.

Claim 5

Claim 5 recites:

The method of claim 4, wherein the pause time field is equal in size to the pause time field in a standard PAUSE frame multiplied by the number of possible priority levels.

The Examiner states,

... wherein said pause time field is equal in size to the pause time field in a standard PAUSE frame multiplied by the number of possible priority levels and wherein the frame is a PAUSE frame (col 9, lines 32-39).¹⁵

The Applicant respectfully disagrees. In support of the Examiner's statement, the Examiner refers to the following portion of Kadambi et al.:

In general, the pause timer value indicated in the VC Handshake frame should be obeyed. In this way, pause may be asserted during the VC Handshake if required. If a non-zero pause time is specified by the VC Handshake frame, then the receiver of the frame may send further VC Handshake frames, but it should not send normal frames until the Pause time is elapsed (or until pause has been deasserted).¹⁶

The above portion of Kadambi et al. speaks generally about obeying a pause time, but says nothing about the pause time field being equal in size to the pause time field in a standard PAUSE frame multiplied by the number of possible priority levels as required by Claim 5. For this additional reason, the 35 U.S.C. § 103 rejection of Claim 5 is unsupported by the cited art of record and the rejection must be withdrawn.

Claim 8

Claim 8 recites:

The method of claim 4, wherein the value signifying that traffic flow to the network device should be paused or not paused according to its priority level is a value not used by standard PAUSE frames in the opcode field.

The Examiner states,

¹⁵ Office Action, p. 6.

¹⁶ Kadambi et al. at col. 9 ll. 32-39.

... Kadambi et al disclosed wherein said value signifying that traffic flow should be paused or not paused according to its priority level is a value not used by standard PAUSE frames in said opcode field (col 15, lines 60-67).¹⁷

The Applicant respectfully disagrees. In support of the Examiner's statement, the Examiner refers to the following portion of Kadambi et al.:

IEEE 802.1D-conformant bridges will not forward frames sent to this multicast destination address, regardless of the state of the bridge's ports, or whether or not the bridge implements the MAC Control sub-layer. To allow generic full duplex flow control stations implementing the PAUSE operation instruct the MAC (e.g. through layer management) to enable reception of frames with destination address equal to this multicast address.¹⁸

The above portion of Kadambi et al. says nothing about a value in an opcode field signifying that traffic flow should be paused or not paused according to its priority level being a value not used by standard PAUSE frames in the opcode field as required by Claim 8. For this additional reason, the 35 U.S.C. § 103 rejection of Claim 8 is unsupported by the cited art of record and the rejection must be withdrawn.

Claim 9

Claim 9 as presently amended recites:

A method comprising:

- determining a present need to pause traffic flow to a network device, the traffic flow comprising one or more digital data packets, each of the one or more digital data packets including a priority level, the priority level indicating a relative level of importance of timely delivery of the digital data packet to the network device; and
- responsive to the determining,
 - placing in a type/length field in a frame, a value signifying that traffic flow to the network device should be paused or not paused according to its priority level;
 - creating a priority mask field in the frame; and
 - placing in the priority mask field, a value signifying which priority levels should be paused.

The Examiner states,

¹⁷ Office Action, p. 6.

¹⁸ Kadambi et al. at col. 15 ll. 60-67.

... Kadambi et al disclosed a method (Figs 10 to 17) comprising: determining a present need to pause traffic to a network device; and responsive to the determining, placing in a typellength field in a frame, a value signifying that traffic flow to the network device should be paused or not paused according to its priority level (LENGTHTYPE Field of Fig 17, col 15, lines 11-59); creating a priority mask field in the frame; and placing in the priority mask field a value signifying which priority levels should be paused (PRIORITY-BITMAP field of Fig 16, col 14, lines 41-46). Kadambi et al disclosed that the traffic flow to the network device should be paused for a specified period of time when the priority indication in the frame typellength field indicates a pause operation (col 15, lines 11 -23), but fails to positively disclose placing in the priority mask field, a value signifying which priority levels should be paused. However, Erimli et al disclosed a method for placing priority value signifying which priority levels should be paused in the typellength field (low and high priority values to control the traffic to the station, col 13, lines 5-40, Fig 5AIB). Therefore it would have been obvious for one of the ordinary skill in the art at the time the invention was made to use the method of placing priority value signifying which priority levels should be paused in the type/length field as taught by Erimli et al in the system of Kadambi et al to create a priority mask field in the frame and placing in the priority mask field, a value signifying which priority levels should be paused. Kadambi and Erimli et al disclosed the traffic flow control using pause frame but fails to positively disclose a method to create a priority mask field in the pause frame. However, Liu et al disclosed a method of generating and identifying mask field in the pause frame using mask registers (mask fields, Figs 1 & 9, col 3, lines 27-54, col 6, lines 64-67, col 7, lines 1-23). Therefore it would have been obvious for one of the ordinary skill in the art at the time the invention was made to use the method of generating mask field in the pause frame as taught by Liu et al in the system of Kadambi et al as modified by Erimli et al to create a priority mask field in the frame to signify whether a data stream of a particular priority should be paused or not. One is motivated as such in order to provide a dynamic traffic flow control in the network device by either pausing or allowing a data stream of certain priority level indicated in the opcode field of the pause frame.¹⁹

The Applicant respectfully disagrees. The arguments made above with respect to the 35 U.S.C. § 103 rejection of Claim 1 apply here as well. Claim 1 being allowable, Claim 9 must also be allowable for at least the same reasons as for Claim 1.

Dependent Claims 11-15

¹⁹ Office Action, pp. 6-7.

Claims 11-15 depend from Claim 9. Claim 9 being allowable, Claims 11-15 must also be allowable for at least the same reasons as for Claim 9.

Claim 11

Claim 11 recites:

The method of claim 9, further comprising:
placing in an opcode field in the frame, a value signifying that the pausing will be for times corresponding to each priority level indicated by a pause time field if it is desired to use the same pause time for each priority.

The Examiner states,

... Kadambi et al disclosed placing a value signifying that the pausing will be for times corresponding to each priority level indicated by a pause time field in an opcode field in the frame if it is desired to use the same pause time for each priority (col 3, lines 41-52).²⁰

The Applicant respectfully disagrees. The arguments made above with respect to the 35 U.S.C. § 103 rejection of Claim 3 apply here as well. Claim 3 being allowable, Claim 11 must also be allowable for at least the same reasons as for Claim 3.

Claim 12

Claim 12 recites:

The method of claim 11, further comprising:
placing in the pause time field, a separate value for each possible priority level, the separate value indicating an independent pause time for each corresponding priority level.

The Examiner states,

... Kadambi et al disclosed placing a separate value for each possible priority level in said pause time field, said separate value indicating an independent pause time for each corresponding priority level (Figs 14/15, col 13, lines 8-30).²¹

²⁰ Office Action, p. 8.

²¹ Office Action, p. 8.

The Applicant respectfully disagrees. The arguments made above with respect to the 35 U.S.C. § 103 rejection of Claim 4 apply here as well. Claim 4 being allowable, Claim 12 must also be allowable for at least the same reasons as for Claim 4.

Claim 13

Claim 13 recites:

The method of claim 12, wherein the pause time field is equal in size to the pause time field in a standard PAUSE frame multiplied by the number of possible priorities.

The Examiner states,

... Kadambi et al disclosed wherein said pause time field is equal in size to the pause time field in a standard PAUSE frame multiplied by the number of possible priorities (coil 15, lines 11-20).²²

The Applicant respectfully disagrees. The arguments made above with respect to the 35 U.S.C. § 103 rejection of Claim 5 apply here as well. Claim 5 being allowable, Claim 13 must also be allowable for at least the same reasons as for Claim 5.

Claims 33-34, 36-42, 44-48, and 57-50

Independent claim 33 is a non-means-plus-function apparatus claim corresponding to method claim 20. Independent claims 34 and 42 are means-plus-function apparatus claims corresponding to method claims 1 and 9, respectively. Independent claims 57 and 58 are *In re Beauregard* claims corresponding to method claims 1 and 9, respectively. Claims 1, 9, and 20 being allowable, Claims 33-34, 42, and 57-58 must also be allowable for at least the same reasons as for Claims 1, 9, and 20.

²² Office Action, p. 8.

Claims 36-41 depend from Claim 34. Claims 44-48 depend from Claim 42. Claims 34 and 42 being allowable, Claims 36-41 and 44-48 must also be allowable for at least the same reasons as for Claims 34 and 42.

The Second 35 U.S.C. § 103 Rejection

Claims 16, 18-20, 22-24, 26-28, 30-32, 49, 51-53, 55-56, and 59-60 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Erimli et al. in view of Liu et al.²³ This rejection is respectfully traversed.

Claims 16, 20, 24, 28, 32, 49, 53, and 59-60

Claims 16 and 20 are method claims. Claims 24, 28, and 32 are non-means-plus-function apparatus claims corresponding to method claims 1, 16, and 20, respectively. Claims 49 and 53 are means-plus-function apparatus claims corresponding to method claims 16 and 20. Claims 59 and 60 are *In re Beauregard* claims corresponding to method claims 16 and 20. The arguments made with respect to Claims 1 and 9 apply here as well. As discussed regarding the 35 U.S.C. § 103(a) rejection of method claims 1 and 9, there is no correspondence between the “levels” of Liu et al. and the “priority level”s in claim 1 as presently amended. With this Amendment, Claims 16, 20, 24, 28, 32, 49, 53, 59, and 60 have been amended to make this distinction more clear. Specifically, Claims 16, 20, 24, 28, 32, 49, 53, 59, and 60 have been amended to recite in part “the traffic flow comprising one or more digital data packets, each of the one or more digital data packets including a priority level, the priority level indicating a relative level of importance of timely delivery of the digital data packet to the network device.” For at least the above reasons, the 35 U.S.C. § 103 rejection of Claims 16, 20, 24, 28, 32, 49, 53, 59, and 60 as presently amended is unsupported by the cited art of record and the rejection must be withdrawn.

²³ Office Action at ¶ 6.

Dependent Claims 18-19, 22-23, 26-27, 30-31, 51-52, and 55-56

Claims 18-19 depend from Claim 16. Claims 22-23 depend from Claim 20. Claims 26-27 depend from Claim 24. Claims 30-31 depend from Claim 28. Claims 51-52 depend from Claims 49. Claims 55-56 depend from Claim 53. Claims 16, 20, 24, 28, 49, and 53 being allowable, Claims 18-19, 22-23, 26-27, 30-31, 51-52, and 55-56 must also be allowable for at least the same reasons as for Claims 16, 20, 24, 28, 49, and 53.

Claims 34-56

Claims 34-56 are means-plus-function claims. In support of the 35 U.S.C. § 103 rejections of Claims 34-56, the Examiner refers to substantially the same portions of the cited references used in the rejection of method claims 1-23, non-means-plus-function apparatus claims 24-33, and *In re Beauregard* claims 57-60. The Examiner is referred to the U.S. Patent and Trademark Office document entitled "Examination Guidelines For Claims Reciting A "Means or Step Plus Function" Limitation In Accordance With 35 U.S.C § 112, 6th Paragraph" ("Guidelines"), a copy of which is submitted herewith for the Examiner's convenience. The Guidelines state:

... Per our holding, the 'broadest reasonable interpretation' that an examiner may give means-plus-function language is that statutorily mandated in paragraph six. Accordingly, *the PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a Patentability determination* ...

... [The] examiner shall interpret a § 112, 6th paragraph "means or step plus function" limitation in a claim as limited to the corresponding structure, materials or acts described in the specification and equivalents thereof in acts accordance with the following guidelines.²⁴

²⁴ "Examination Guidelines For Claims Reciting A "Means or Step Plus Function" Limitation In Accordance With 35 U.S.C § 112, 6th Paragraph," U.S. Patent and Trademark Office, <http://www.uspto.gov/web/offices/pac/dapp/pdf/exmgui.pdf>, p. 1. (emphasis added)

The Guidelines state further:

... if a prior art reference teaches identity of function to that specified in a claim, then under Donaldson an examiner carries the initial burden of proof for showing that the prior art structure or step is the same as or equivalent to the structure, material, or acts described in the specification which has been identified as corresponding to the claimed means or step plus function.²⁵

As Claims 34-56 of the present application are means-plus-function claims and Claims 1-33 and 57-60 of the present application are non-means-plus-function claims, they cannot be said to be drawn to identical subject matter. Furthermore, the Examiner has not shown for each means-plus-function claim, that the prior art structure or step is the same as or equivalent to the structure, material, or acts described in the specification which has been identified as corresponding to the claimed means or step plus function. Therefore, the Examiner has not established a *prima facie* case and the rejection of Claims 34-56 must be withdrawn.

Additionally, the Applicant made the above argument in the Response filed July 17, 2009. Considering that the Examiner has not provided any comments or rebuttal to the Applicant's argument, but only restated prior rejections, it can be assumed that the Examiner agrees to the Applicant's arguments and that the Claims are allowable.²⁶

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

²⁵ Guidelines at p. 3. (emphasis in original)

²⁶ *In re Herrmann*, 261 F.2d 598 (CCPA 1958) (The court noted that since applicant's arguments were not questioned by the examiner, the court was constrained to accept the arguments at face value and thus held the claims to be allowable); See *In re Soni*, 54 F.3d 746 (Fed. Cir. 1995).

Conclusion

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

The Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-3557.

Respectfully submitted,

NIXON PEABODY LLP

Dated: January 8, 2009

/ John P. Schaub/

John P. Schaub

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